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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Interconnection Between Local )  
Exchange Carriers and Commercial )  
Mobile Radio Service Providers )

CC Docket No. 95-185

Equal Access and Interconnection )  
Obligations Pertaining to )  
Commercial Mobile Radio Service )  
Providers )

CC Docket No. 94-54

To: The Commission

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**Comments  
of  
Cellular Mobile Systems of St. Cloud General Partnership**

**Cellular Mobile Systems  
of St. Cloud General Partnership**

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## TABLE OF CONTENTS

	<u>Page</u>
I. General Comments. . . . .	3
II. Compensation for Interconnected Traffic between LECs and CMRS Providers' Networks -- Compensation Arrangements -- Pricing Proposals . . . . .	5
A. Existing Compensation Arrangements. . . . .	5
B. Interim Pricing Proposals . . . . .	5
1. Bill and Keep . . . . .	5
2. Interim Alternatives and Long Term Pricing . . . . .	7
C. Long Term Pricing . . . . .	10
D. Symetrical Compensation. . . . .	11
E. Forbearance From Rate Regulation . . . . .	11
III. Compensation for Interconnected Traffic Between LECs and CMRS Providers' Networks -- Implementation of Compensation Arrangements. . . . .	13
A. Negotiations and Tariffing. . . . .	13
B. Jurisdictional Issues . . . . .	13
IV. Interconnection for the Origination and Termination of Interstate Interexchange Traffic . . . . .	16
V. Application of These Proposals . . . . .	17
VI. Impact of Federal Legislation. . . . .	18
VII. Conclusion . . . . .	19
VIII. Appendix A . . . . .	attached

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To: The Commission

COMMENTS  
OF  
CELLULAR MOBILE SYSTEMS OF ST. CLOUD GENERAL PARTNERSHIP

Cellular Mobile Systems of St. Cloud General Partnership ("CMS"), by its attorneys, hereby submits its comments in response to the Notice of Proposed Rulemaking ("NPRM") issued by the Federal Communications Commission ("FCC" or "Commission") on January 11, 1996 in the above-captioned proceeding.

CMS is a licensed provider of cellular telephone service in the St. Cloud, Minnesota Metropolitan Statistical Area ("MSA"). As a cellular carrier, CMS interconnects its facilities with those of local landline carriers so that mobile callers on its network may reach individuals on the landline network and vice versa. As a provider of commercial mobile radio service ("CMRS"), CMS will be directly affected by any rule changes adopted by the Commission that relate to local exchange carrier ("LEC")-CMRS interconnection arrangements.

On October 17, 1995, CMS met with the staff of the Commission's Wireless Telecommunications Bureau, urging the adoption of a "bill and keep" type approach to interconnection. Subsequent to that meeting, the Commission adopted the subject NPRM. In view of the impact on CMS of any rules adopted in this proceeding, and CMS's demonstrated interest in this proceeding, CMS appreciates the opportunity to respond to the NPRM. In accordance with the Commission's request, these Comments are formatted as requested in paragraph 133 and footnote 171 of the NPRM.

Cellular Mobile Systems of St. Cloud  
Comments  
CC Docket No. 95-185  
March 4, 1996  
Outline Section I - General Comments

### **General Comments**

In establishing the principle of "mutual compensation", the Commission properly recognized the disparity in market power and inequality of interconnection compensation arrangements between LECs and CMRS providers. The FCC's establishment of the mutual compensation requirement, under which LECs must compensate CMRS providers for the reasonable costs incurred by such providers in terminating traffic that originates on LEC facilities, was a well intentioned attempt to ensure that CMRS providers and LECs recover their costs in terminating calls originating on the other provider's network.<sup>1</sup> Unfortunately, the mutual compensation requirement has been widely ignored in practice. CMS is unaware of any LECs that currently compensate CMRS providers for their role in terminating calls that originate on the LEC network. Due to the disparity in market power, CMRS providers on the whole have heretofore been grateful merely to receive interconnection from the LECs, and have generally not attempted to obtain enforcement of the mutual compensation obligation.

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<sup>1</sup> See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1497-1498 (1994); The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Declaratory Ruling, 2 FCC Rcd 2910, 2915 (1987), aff'd, Memorandum Opinion and Order on Reconsideration, 4 FCC Rcd 2369 (1989).

CMS commends the Commission for its recognition that the mutual compensation requirement has not resulted in the sharing of interconnection costs envisioned by the Commission. The various pricing options discussed by the Commission in the NPRM, including "bill and keep", all remedy the ineffectiveness of the mutual compensation requirement by imposing specific compensation requirements on LEC-CMRS interconnection. While, CMS believes that its proposed compensation requirement (discussed in detail in Outline Section II(A)(3) below) will best serve the public interest, adoption of any of the options discussed by the Commission would result in a marked improvement over the current system under which LEC mutual compensation obligations are routinely ignored.

Cellular Mobile Systems of St. Cloud  
Comments  
CC Docket No. 95-185  
March 4, 1996  
Outline      Section      II(A)(3)      --  
                 Compensation Arrangements (Pricing  
                 Proposals)

**Compensation for Interconnected Traffic Between LECs and CMRS  
Providers' Networks -- Compensation Arrangements -- Pricing Proposals**

**Existing Compensation Arrangements**

CMS currently pays compensation to LECs for mobile originated calls that terminate on the LEC's wireline network. The mutual compensation requirement notwithstanding, CMS receives no compensation for terminating calls that originate on the wireline network. CMS estimates that as a result of not receiving any compensation from LECs for terminating their traffic over its cellular network, it will incur additional operating costs of approximately \$100,000 this year, costs which by necessity must be borne by CMS's customers.

**Interim Pricing Proposals**

**Bill and Keep.** CMS supports the Commission's proposal to require compensation for terminating land-to-mobile and mobile-to-land calls on a "bill and keep" basis, at least on an interim basis. Under bill and keep, traffic is terminated at a "zero rate." In other words, a LEC would not charge a CMRS provider for terminating traffic that originated on the CMRS provider's network, while a CMRS provider would not charge a LEC for terminating traffic that originated on the LEC network.

CMS agrees with the Commission that bill and keep is an administratively simple solution. Indeed, bill and keep is in all likelihood the only interconnection pricing option capable of being implemented on an immediate basis. Given the existing disparity between LECs and CMRS providers with respect to recovery of switching costs, immediate implementation of an interconnection pricing scheme is critical. The current competitive imbalance should not be prolonged any longer than absolutely necessary.

LECs will undoubtedly argue that bill and keep is unfair to them due to a balance of traffic that generally results in more mobile-to-land than land-to-mobile calls. However, such an assumption is not necessarily born out by the facts. In the case of CMS, the balance of traffic remains roughly equal. Indeed, as shown in the attached graph depicting local type 2A monthly call attempts, several months have resulted in a greater number of land-to-mobile than mobile-to-land call attempts.

CMS recognizes that its situation may be atypical of cellular carriers nationwide. Residents of rural areas tend to spend more time in their vehicles than residents of urban areas due to a need to travel greater distances on a daily basis than their urban counterparts. Often during the day, rural cellular subscribers can only be reached on their cellular phones. Accordingly, rural subscribers tend to receive more calls on their cellular phones than subscribers in more urban areas. Nonetheless, as cellular



phone use becomes more prevalent, and with the advent of "caller pays" type billing, an equal balance of land-to-mobile and mobile-to-land traffic can be expected.

Even in areas where there is a greater percentage of mobile-to-land traffic, the adoption of bill and keep on an interim basis is not inequitable. CMS has been terminating LEC traffic for the last eight years without compensation despite the existence of a mutual compensation policy. Even if balance of traffic in a particular case slightly favors a cellular carrier with respect to the use of bill and keep, any inequalities resulting from the use of bill and keep would amount to only a fraction of the dollar amounts lost by cellular carriers every year due to the failure of LECs to honor their mutual compensation obligations.

**Interim Alternatives and Long Term Pricing.** Each of the alternative options for an interim pricing plan discussed in the NPRM is administratively complex and unsuitable for immediate implementation, and therefore inappropriate for an interim pricing scheme. Moreover, from a long term as well as a short term perspective, these alternative options have other flaws as well. For example, one option posed by the NPRM would be to limit bill and keep to off-peak traffic, with charges assessed for peak-period traffic. This option would be difficult to implement due to the divergent off peak periods for cellular and wireline traffic. Wireline peak periods occur during normal business hours, while

cellular periods of heavy use fall just outside those hours during commuting periods. Another option would apply tariffed interconnection arrangements between LECs and wireline local exchange competitors to LEC-CMRS interconnection. In rural areas, like those served by CMS, there are no competitive access providers, and therefore no arrangements to serve as models. Another option proposed by the Commission would have interconnection rates set at some fixed percentage of the measured local service rates charged by LECs to their local customers. Such a rate would bear little relation to the cost of terminating traffic and, in any event, CMS questions whether agreement could be reached with respect to setting such a rate. The option of establishing a presumptive uniform per-minute rate for all LECs and CMRS providers is attractive; however, the likely contention over how such a rate would be set essentially renders the short term viability of this option nonexistent.

One option presented by the NPRM does have some appeal as a long term approach. Under this option, a bill and keep arrangement would be imposed on a LEC pending negotiation of a mutually acceptable interconnection arrangement between the LEC and CMRS provider or the approval of cost based charges. If negotiations break down, the Commission suggested that the dispute be resolved through the imposition of a rate equal to the lowest of various rates developed through application of some of the other alternatives posed by the Commission.

CMS believes that the concept underlying this option is a good one -- i.e., imposition of a bill and keep arrangement until a mutually satisfactory interconnection rate is developed. However, under the suggested approach, which invokes other methods to resolve a dispute, there is no guarantee that a mutually satisfactory rate will actually be developed. Rather than resolving a protracted dispute by applying one of the flawed options discussed above, CMS suggests an alternative approach as outlined below.

CMS suggests a three phase process which borrows from the Commission's procedural approach to relocating incumbent private microwave licensees in the 2 GHz band.<sup>2</sup> Under CMS's proposal, bill and keep would automatically apply for a two year "voluntary negotiation" period. During this period, the LEC and CMRS provider would be free to negotiate a mutually agreeable interconnection rate at any time. If, after two years, an agreement is not reached, a two year "mandatory negotiation" period would occur, during which time bill and keep would continue in place. If the parties are unable to reach an agreement by the end of this second phase, the conflict would be resolved by means of alternative dispute resolution ("ADR") techniques. CMS suggests that the FCC's Compliance and Information Bureau serve as the arbiter of any such

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<sup>2</sup> See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, Third Report and Order and Memorandum Opinion and Order, ET Docket No. 92-9, released August 13, 1993.

protracted disputes.

CMS's proposal has several advantages over the various options discussed by the Commission. If either party is unhappy with the use of bill and keep, they are free to enter into a mutually acceptable alternative arrangement. However, if agreement cannot be reached, a system remains in place that ensures some degree of reciprocity with respect to recovery of LEC-CMRS interconnection costs. The CMS approach will also avoid the need for use of already taxed Commission resources, by incenting the parties to resolve compensation issues themselves without the need for Commission intervention. Only if the parties cannot reach agreement after at least two (and up to four) years of negotiations, will the Commission's active participation become necessary.

#### **Long Term Pricing**

CMS's alternative proposal discussed above, satisfies the need for both an interim and long term approach to the pricing of LEC-CMRS interconnection. If the Commission chooses not to adopt CMS's approach, CMS urges the Commission to withhold any decision on adoption of a long term pricing approach until there has been time to see the marketplace results of use of the interim approach the Commission ultimately chooses to adopt. CMS suggests that the Commission allow at least one year following implementation of an interim approach before issuing a further notice of proposed

rulemaking in this proceeding.

### **Symmetrical Compensation**

Regardless of the approach ultimately adopted by the Commission, CMS agrees with the Commission's tentative conclusion that LEC-CMRS interconnection rates should be symmetrical -- i.e., LECs should pay CMRS providers the same rates as CMRS providers pay LECs. In order to justify asymmetrical compensation, each carrier will need to perform extensive cost studies. Symmetrical compensation is administratively simple. Requiring that compensation be symmetrical will avoid the need for the development of extensive cost justifications, and keep the Commission from having to serve as referee in a "Battle of Accountants."

### **Forbearance From Rate Regulation**

In paragraph 80 of its NPRM, the Commission asks whether it should revisit its existing policy of forbearing from regulating CMRS providers' rates in order to enforce any interim policies adopted with respect to the rates CMRS providers charge to LECs. As discussed above, there is no need for the Commission to adopt any interim or long term policy that would require oversight of particular rates for LEC-CMRS interconnection. While a few of the options presented by the NPRM might require some type of regulatory oversight of LEC-CMRS interconnection rates (e.g., establishing a uniform per-minute interconnection rate), none of these options would require full blown rate regulation. Accordingly, there is

absolutely no basis for the Commission to take what would be a dramatic departure from its historical forbearance from CMRS rate regulation.

Cellular Mobile Systems of St. Cloud  
Comments  
CC Docket No. 95-185  
March 4, 1996  
Outline      Section      II(B)      --  
Implementation of Compensation  
Arrangements

**Compensation for Interconnected Traffic Between LECs and CMRS  
Providers' Networks -- Implementation of Compensation Arrangements**

**Negotiations and Tariffing**

CMS agrees with the FCC's tentative conclusion that information about interconnection arrangements should be made publicly available. Such public disclosure will facilitate negotiations between LECs and CMRS providers. Knowledge of the terms of other agreements should help to reduce the bargaining advantage currently held by LECs. Negotiated interconnection arrangements should be filed with the FCC, but there should be no requirement that such agreements be incorporated into carrier tariffs. A tariffing requirement is unduly burdensome without any countervailing public benefit (assuming the existence of a requirement that interconnection agreements be publicly filed).

**Jurisdictional Issues**

The Commission asked for comment on three alternative approaches to implementing its interconnection policies. Under the first alternative, states would be expected to voluntarily follow the federal model governing interconnection arrangements for intrastate services, but there would be no mandatory requirement that they do so. Under the second approach, the FCC would adopt a

mandatory federal policy framework to govern interconnection arrangements between LECs and CMRS providers with respect to both interstate and intrastate services, but allow state commissions flexibility in implementing that framework. Under the third alternative, the Commission would adopt specific federal requirements for interstate and intrastate LEC-CMRS interconnection arrangements.

CMS urges the Commission to adopt the third approach. The Commission should adopt mandatory federal requirements applicable to both interstate and intrastate LEC-CMRS interconnection arrangements. Section 332 of the Communications Act of 1934 ("the Act"), as amended, provides the Commission with the authority to preempt state regulation of interconnection rates of CMRS providers.<sup>3</sup> The Commission may also preempt state regulation where it is physically impossible or impractical to separate the interstate and intrastate components of a call.<sup>4</sup> CMS lacks the technical capability to determine whether a call interconnecting with its network is an interstate or intrastate call. Indeed, in adopting Section 332 of the Act, Congress recognized that "mobile services...by their very nature, operate without regard to state

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<sup>3</sup> 47 U.S.C. Section 332(c)(3)(A) ("no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service...").

<sup>4</sup> Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986).



lines."<sup>5</sup>

Preempting inconsistent state regulation with a set of mandatory federal requirements governing LEC-CMRS interconnection will help to facilitate the nationwide growth of CMRS, and thereby accelerate the advent of competition both locally and nationwide. Accordingly, the Commission not only has the statutory authority to adopt such an approach, the public interest requires it.

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<sup>5</sup> See H.R. Rep. No. 111, 103rd Cong., 1st Sess. 260 (1993).

Cellular Mobile Systems of St. Cloud  
Comments  
CC Docket No. 95-185  
March 4, 1996  
Outline      Section      III      --  
Interconnection with IXCs

**Interconnection for the Origination and Termination of Interstate  
Interexchange Traffic**

CMS agrees with the Commission's tentative conclusion that CMRS providers should be entitled to recover access charges from interexchange carriers ("IXCs") when interstate interexchange traffic passes from CMRS customers to IXCs, as the LECs now do. This conclusion is entirely consistent with the concept of mutual compensation. However, notwithstanding CMS's agreement with the Commission's conclusion, CMS believes that the issue of CMRS-IXC interconnection is best dealt with in the Commission's forthcoming access reform proceeding. That proceeding is the appropriate vehicle for resolution of issues related to access charges.

Cellular Mobile Systems of St. Cloud  
Comments  
CC Docket No. 95-185  
March 4, 1996  
Outline      Section      IV      - -  
Application of Proposals

**Application of These Proposals**

Any rules adopted by the Commission in this rulemaking proceeding should apply to interconnection arrangements between LECs and all CMRS providers. There is absolutely no basis for discriminating in favor of one class of CMRS provider over another. To apply rules adopted in this proceeding only to interconnection arrangements between LECs and broadband PCS providers would not only exacerbate the historical harm already incurred by cellular carriers who have been unable to obtain the mutual compensation promised by the Commission's rulings, it would make a mockery of the notion of "regulatory parity" which forms the statutory basis for the regulation of CMRS.

Cellular Mobile Systems of St. Cloud  
Comments  
CC Docket No. 95-185  
March 4, 1996  
Outline Section VI -- Other (Impact  
of Federal Legislation)

**Impact of Federal Legislation**

In its Supplemental Notice of Proposed Rulemaking ("Supplemental NPRM"), the Commission asked for comment on the impact of the Telecommunications Act of 1996 ("the 1996 Act") on the issues raised in the NPRM, particularly those issues related to jurisdiction. In CMS's view, the recently enacted legislation has no direct impact on the issues pending in this proceeding. The 1996 Act does not address LEC-CMRS interconnection nor does it directly address the jurisdictional issues raised by the NPRM. To the contrary, Section 253 of the 1996 Act ("Removal of Barriers to Entry") explicitly retains the applicability of Section 332(c)(3) of the Act. To delay any further the resolution of this proceeding will only result in further harm to cellular carriers such as CMS who continue to await the adoption of rules that will finally make the legal policy of mutual compensation a marketplace reality.

**Conclusion**

For the foregoing reasons, CMS respectfully requests that the Federal Communications Commission act in a manner consistent with the views expressed herein.

Respectfully submitted,

**CELLULAR MOBILE SYSTEMS OF ST. CLOUD  
GENERAL PARTNERSHIP**

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Dated: March 4, 1996

## Appendix A

# Call Attempts

Over Local Type 2A per Month

